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IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

BAM FRANCHISING, INC., a Delaware corporation; AMMON MCNEFF, an individual; MATTHEW MCNEFF, an individual; JOSH JOHNSON, an individual; BRANDON BEST, an individual; BAKER BRICKS, LLC, a Utah limited liability company, and dba SALEM-BAKER BRICKS INC., an Oregon corporation, Plaintiffs, vs. BENJAMIN PAUL SCHNEIDER, an individual, dba and aka "RECKLESS BEN"; RECKLESS BEN LLC, a California limited liability company; BRYAN MANSELL, an individual; VICTOR NGUYEN, an individual; and DOES 1-15, Defendants.	**PROPOSED INTERVENORS' UTAH R. CIV. P. 65A(b)(4) MOTION TO MODIFY OR DISSOLVE TEMPORARY RESTRAINING ORDER AND REQUEST FOR EXPEDITED HEARING** Case No. 260402353 Tier 3 Judge Tony F. Graf, Jr.

Conditional upon the Court's grant of their concurrently filed Motion for Limited Intervention, non-parties Chrystal Law, Benjamin Gorman, and BAMF Salem 1, LLC (the "Law-Gorman Parties") respectfully move, under Utah R. Civ. P. 65A(b)(4), to modify or dissolve the Temporary Restraining Order entered ex parte on June 2, 2026 (the "TRO"), and to oppose entry of any preliminary injunction of the same scope, to the extent the order (1) defines its operative reach by reference to the Law-Gorman Parties and their dispute, and (2) purports to restrain or to be enforceable against them through "co-conspirator," "acting in concert," or Doe-defendant

language. This motion takes no position on relief directed at the Defendants named in this case who are alleged to have engaged in true threats, doxxing, trespass, or impersonation.

This Motion targets the order's reach over strangers to this case and over protected expression concerning the Law-Gorman Parties' dispute. This is a special, limited appearance; the Law-Gorman Parties submit to the Court's jurisdiction for no other purpose and reserve all rights, including under the Utah Public Expression Protection Act, *Utah Code* §§ 78B-25-101 to -115.

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INTRODUCTION AND RELIEF REQUESTED

Chrystal Law is named in the TRO—not as a defendant, because Plaintiffs have sued her nowhere in this action, but in the definition of what the order erases. Paragraph 5(k) mandates the removal of the co-Defendants' publications that "in any way relate to the private legal dispute underlying this matter between Bryan and Chrystal." TRO ¶ 5(k). Ms. Law, Mr. Gorman, and their

company BAMF Salem 1, LLC are the former Salem, Oregon franchisees whose dispute with BAM Franchising, Inc. is the subject of a pending action they filed in the Utah Business and Chancery Court, *BAMF Salem 1, LLC v. BAM Franchising, Inc.*, No. 260200029.

Through an ex parte order entered in a case to which they are strangers, Plaintiffs have obtained a command that the internet be scrubbed of the Law-Gorman Parties' grievance. And through Paragraph 5's extension to "co-conspirators" and "anyone acting in concert with" Defendants "directly or indirectly," together with fifteen unidentified Doe defendants, Plaintiffs have reserved the ability to contend that the Law-Gorman Parties were bound all along—without service, joinder, notice, bond, or any adjudication that a single statement is false. The Constitution, the day-in-court rule, and Rule 65A each independently forbid this.

ARGUMENT

I. An injunction cannot bind or adjudicate the rights of known non-parties who have never been served, joined, or heard.

A court's injunction reaches only the parties before it and those who, with notice, aid a party's violation. Rule 65A(e) provides that an injunction "shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice . . . of the order."

That concert language is an anti-evasion principle, not a substitute for joinder. It exists so that "defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors"; it does not authorize an order "so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 13–14 (1945). As Judge Learned Hand explained, a court "cannot lawfully enjoin the world at large," and the concert clause "adds nothing to the decree": "Without [it] any one is liable who knowingly does what the court has properly enjoined; with [it] nobody is liable who does not." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832–33 (2d Cir. 1930).

Most directly, a court may not enter an injunction against a person who was never made a party. In *Zenith Radio Corp. v. Hazeltine Research, Inc.*, the Supreme Court held it "was error to

enter the injunction against" a non-party "without having made [the concert] determination in a proceeding to which [it] was a party," because "a nonparty with notice cannot be held in contempt until shown to be in concert or participation." 395 U.S. 100, 112 (1969).

That rule rests on first principles of due process: "one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Id.* at 110 (citing *Hansberry v. Lee*, 311 U.S. 32, 40–41 (1940)); *accord Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008) (recognizing "the 'deep-rooted historic tradition that everyone should have his own day in court'") (quoting Richards v. Jefferson County, 517 U.S. 793, 798 (1996)).

What the concert clause cannot do is serve as a substitute for joinder against identified, known persons whose conduct is independent. Sharing a grievance with an enjoined party is not aiding a violation. Coordinating lawful advocacy about a matter of public concern is not aiding a violation. Litigating one's own claims in one's own forum is not aiding a violation. The Law-Gorman Parties are not anonymous Does; they are known, named individuals and a known company, identified in the order itself and litigating an identified case against Plaintiff BAM in another Utah court. If Plaintiffs believe the Law-Gorman Parties have done something enjoinable, the Constitution prescribes the route: name them, serve them, and prove it—a route Plaintiffs have conspicuously declined. Due process forbids accomplishing through an order's concert clause what Plaintiffs decline to attempt through a complaint.

That declination is unsurprising. Any claim against the Law-Gorman Parties arising from their expression on a matter of public concern would be met by a special motion under the Utah Public Expression Protection Act, which stays proceedings and shifts fees and costs to the moving party who prevails. *See Utah Code* §§ 78B-25-103, -104, -110. The concert and Doe language should not be permitted to reach by injunction what Plaintiffs have elected not to pursue by claim.

II. Paragraph 5(k) is an unconstitutional prior restraint, and it restrains the speech of persons not before the Court.

Paragraph 5(k) is a mandatory, content-based order compelling the removal of the co-Defendants' publications relating "in any way" to an identified dispute, entered ex parte, before any adjudication that any statement is false or unlawful.

A. The order is a prior restraint entered without any adjudication of falsity.

Prior restraints on expression bear "a heavy presumption against [their] constitutional validity," and their proponent "carries a heavy burden of showing justification for the imposition of such a restraint." *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *accord New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). "[I]t is the chief purpose of the guaranty to prevent previous restraints upon publication." *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931). Such restraints are "the most serious and the least tolerable infringement on First Amendment rights," because, unlike a later sanction, a prior restraint has "an immediate and irreversible sanction" and "freezes" speech. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Utah law is in accord: the Utah Supreme Court has applied the same "heavy presumption" and "heavy burden" to an ex parte order restraining publication, *KUTV, Inc. v. Conder*, 668 P.2d 513 (Utah 1983), and the Utah Constitution independently provides that "[n]o law shall be passed to abridge or restrain the freedom of speech or of the press," Utah Const. art. I, § 15.

Equity, moreover, historically will not enjoin an alleged defamation before a final adjudication of falsity; "the maxim that equity will not enjoin a libel has enjoyed nearly two centuries of widespread acceptance at common law." *Kramer v. Thompson*, 947 F.2d 666, 677 (3d Cir. 1991). An injunction against repeating challenged statements is permissible, if at all, only after a trial has determined the statements to be defamatory, and then only as narrowly limited to those statements. *See Balboa Island Village Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 156 P.3d 339 (2007).

Paragraph 5(k) is the opposite: a sweeping takedown entered ex parte, with no trial, no finding of falsity, and no limitation to specified statements.

B. The order is overbroad: it reaches true statements, opinion, and public records.

An order affecting First Amendment rights must be "precise" and narrowly "tailored to achieve the pin-pointed objective of the needs of the case," and may not "swee[p]" "more broadly than necessary." *Tory v. Cochran*, 544 U.S. 734, 738 (2005). Paragraph 5(k) sweeps too broadly. By commanding removal of everything "that in any way relate[s] to" an entire dispute, it reaches true statements, opinion, reports of public court filings, and news commentary alike—protected expression that no court has found, or could find on this record, to be unlawful. "In a case of this kind the courts do not concern themselves with the truth or validity of the publication." *Keefe*, 402 U.S. at 418. A restraint defined by what "in any way relate[s]" to a subject is overbroad on its face.

C. Paragraph 5(j) is an impermissible prospective restraint.

Paragraph 5(j) compounds the defect, restraining future publication of any "false, misleading, harassing, interfering, defamatory or unlawful" content "respecting Plaintiffs"—categories the order leaves to Plaintiffs' own enforcement by contempt. A standing, content-based prohibition on future speech, untethered to any adjudication, is a quintessential prior restraint. *See Near*, 283 U.S. at 713.

D. The restraint silences identified non-parties about their own dispute.

Both provisions, through Paragraph 5's concert clause, reach the expression of the Law-Gorman Parties—identified strangers to this litigation—about their own dispute. By its terms, the order compels the removal of, and to forbid, protected speech concerning the Law-Gorman Parties' own Business and Chancery Court case, on pain of contempt. A restraint silencing identified non-parties about their own dispute is not a marginal tailoring failure; it is the order's evident object.

III. <u>The TRO does not comply with Rule 65A on its own terms.</u>

A. The order restrains acts by reference to the complaint, contrary to Rule 65A(e).

Rule 65A(e) requires that every injunction "be specific in terms and . . . describe in reasonable detail, *and not by reference to the complaint or other document*, the act or acts sought to be restrained." Utah R. Civ. P. 65A(e) (emphasis added).

Paragraph 5(k) does precisely what the rule forbids: it defines the "Publications" to be removed "as such term is defined in the Verified Complaint" and limits the takedown to matters "described in this Verified Complaint." TRO ¶ 5(k). An order whose operative scope can be understood only by cross-referencing the pleadings fails Rule 65A(e)'s particularity command.

B. The order requires no security, on a rationale that assumes the merits.

Security is the rule. Rule 65A(d)(1) commands that "[t]he court shall condition issuance of the order or injunction on the giving of security . . . unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security." Utah R. Civ. P. 65A(d)(1). Neither exception fits this case. The Court excused any bond on the ground that the restrained parties "will suffer no legitimate harm from being restrained." TRO ¶ 6.

But an injunction is "wrongful"—and security answers for it—whenever "it is finally determined that the applicant was not entitled to the injunction," regardless of good faith. *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered*, 681 P.2d 1258, 1262 (Utah 1984). A mandatory takedown directed at monetized online publications is precisely the context in which a wrongfully restrained party suffers quantifiable loss. The "no legitimate harm" rationale assumes the merits to excuse the very safeguard that exists for the case in which the applicant turns out to be wrong. Plaintiffs identified no "other substantial reason" for dispensing with security.

C. The order is mandatory, ex parte, and changes rather than preserves the status quo.

A temporary restraining order preserves the status quo. *See Sys. Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983) (preliminary injunction is "'an anticipatory remedy purposed to prevent the perpetration of a threatened wrong or to compel the cessation of a continuing one.'") (quoting *Anderson v. Granite Sch. Dist.,* 17 Utah 2d 405, 407, 413 P.2d 597, 599 (1966)); see also *Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc.,* 805 F.2d 351, 355 (10th Cir.1986) (preliminary injunction serves to "preserve the status quo pending the outcome of the case.")). Paragraph 5(k) does the opposite: it compels affirmative action—the takedown of existing publications—thereby altering the status quo through a mandatory injunction entered

without notice. An ex parte order may issue only on "specific facts" showing that "immediate and irreparable injury . . . will result . . . before the adverse party . . . can be heard," Utah R. Civ. P. 65A(b)(1), and must "state the reasons justifying the court's decision to proceed without notice," Utah R. Civ. P. 65A(e). Compelling the destruction of speech is relief that cannot be undone after the June 22 hearing. That is not the status-quo preservation an ex parte TRO can provide.

D. The TRO has, by its terms, outlived Rule 65A(b)(2)'s 14-day limit.

An ex parte restraining order may not run indefinitely. Rule 65A(b)(2) commands that "[t]he order shall expire by its terms within such time after entry, not to exceed 14 days," unless, "within the time so fixed," it is extended "for good cause shown" for "a like period," or the restrained party consents—and "[t]he reasons for the extension shall be entered of record." Utah R. Civ. P. 65A(b)(2). That limit is mandatory and self-executing: a temporary restraining order that does not expire by its terms within fourteen days does not comply with the Rule. This TRO does not comply. Entered June 2, 2026, it has no expiration date at all. Instead, it "remains in effect until such time as the Court enters its ruling on Plaintiffs' Motion for Preliminary Injunction," relief to follow the June 22 hearing and to continue indefinitely after that. TRO ¶¶ 7–8.

Fourteen days from entry elapsed on June 16, 2026. The order contains no good-cause finding extending it for a like period, states no reasons for any extension of record, and reflects no consent by the restrained parties. The TRO has therefore expired by operation of Rule 65A(b)(2); to the extent it purports to remain in force, it must be dissolved. This defect is independent of the constitutional questions and it cannot be cured retroactively at the June 22 hearing: an ex parte order that exceeds the Rule's temporal limit must be dissolved, and any continuing relief must be entered, after notice, in a new order that satisfies Rule 65A(f).

E. Paragraph 4 rests on the "serious issues" standard that Rule 65A no longer contains.

The TRO's findings also invoke a basis the Rule has discarded. Paragraph 4 recites, in support of the order, that "[t]his case also presents serious issues of law and fact supporting the entry of this Temporary Restraining Order." TRO ¶ 4. But current Rule 65A(f) permits a restraining order or preliminary injunction to issue "only upon a showing" of four factors—a

substantial likelihood of success on the merits, irreparable harm, that the threatened injury outweighs the harm to the restrained party, and that the order is not adverse to the public interest—and it contains no "serious issues" alternative. Utah R. Civ. P. 65A(f).

But the "serious issues on the merits which should be the subject of further litigation" formulation was removed from the grounds for issuance effective February 14, 2023, and now appears only in Rule 65A(g)'s reconsideration provision, which is limited to an order "restraining or enjoining the enforcement of a law"—not this one. Utah R. Civ. P. 65A(g). To the extent the TRO rests on the discarded "serious issues" basis, Rule 65A no longer supplies it; any preliminary injunction of the same scope must independently satisfy each of the four factors of Rule 65A(f).

IV. Any preliminary injunction must be confined to the named, served Defendants and to specific, unprotected conduct.

The Law-Gorman Parties do not ask the Court to leave unaddressed claims of threats, doxxing, trespass, or impersonation. They ask the Court to do what Rule 65A and the Constitution require: (1) confine any injunction to the named, served Defendants and to those genuinely in active concert with them; (2) describe any restrained acts with Rule 65A(e) particularity, not by reference to the complaint; (3) strike Paragraph 5(k)'s definition-by-reference to "Bryan and Chrystal" and its blanket takedown mandate; (4) make express that the order neither binds nor restrains Chrystal Law, Benjamin Gorman, or BAMF Salem 1, LLC, and adjudicates nothing as to them; and (5) require security for any continuing injunctive relief.

CONCLUSION AND RELIEF REQUESTED

The Law-Gorman Parties respectfully request that the Court: (1) modify or dissolve the TRO by striking Paragraph 5(k), or at minimum its reference to "the private legal dispute underlying this matter between Bryan and Chrystal" and its takedown mandate; (2) clarify that the TRO's and any preliminary injunction's references to "co-conspirators," "acting in concert," and Doe defendants do not reach the Law-Gorman Parties; (3) clarify that Paragraph 5(j) neither binds nor restrains the Law-Gorman Parties and does not prohibit truthful statements, opinion, reports of public records, or other protected expression concerning their own dispute; (4) decline to enter

any preliminary injunction of the same scope; (5) require security for any continuing injunctive relief; and (6) grant such further relief as is just.

DATED this 16th day of June, 2026.

Respectfully submitted,

SPENCERWILLSON, PLLC

/s/ Sarah Elizabeth Spencer
Sarah Elizabeth Spencer
Attorney for Proposed Limited Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2026, I caused a true and correct copy of the foregoing **MOTION TO MODIFY OR DISSOLVE TEMPORARY RESTRAINING ORDER AND OPPOSITION TO ENTRY OF A PRELIMINARY INJUNCTION OF THE SAME SCOPE AND REQUEST FOR EXPEDITED HEARING** to be served on all counsel of record via the Court's electronic filing system:

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- within 14 days of this motion being filed, if the motion will be decided by a judge, or
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- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

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